BOOKER v. DONOHOE.—Decided at Richmond, December 2, 1897. *Keith*, P:

1. PLEADING—*Counts in tort and upon contract in same declaration—Action to recover fees of de facto officer.* Counts in tort and upon contract cannot be combined in the same declaration, but a count which simply sets out the details of an intrusion into an office, and claims of a *de facto* officer the emoluments of an office which have been illegally collected by him, and avers an *indebitatus assumpsit* to the *de jure* officer, cannot be said to be a count in tort.

2. PLEADING—*Assumpsit—Declaration—Account.* The bill of particulars, or account, required to be filed with a declaration in assumpsit is no part of the declaration.

3. PLEADING—*Assumpsit—Action to recover emoluments of office—De jure office—Taking oaths and giving bond—Case at bar—Measure of damages.* Assumpsit is the proper remedy for the recovery by a *de jure* officer of the emoluments of the office illegally collected by a *de facto* officer. A *de jure* officer is entitled to the emoluments of the office of which he has been deprived from the date on which he was entitled to enter upon the discharge of the duties of the office, and it is not necessary as a condition precedent to his right of recovery that he should have qualified himself to discharge the duties of the office by taking the oaths and giving the bond required by law. In the case at bar, the measure of damages of the plaintiff, who was deprived of the office of clerk of the county court, if he proves the case set forth in the declaration, is so much of the *ex-officio* allowance to the clerk as was collected by the defendant, and the amount of fees received by him as such clerk, less the necessary expense of earning them, unless the defendant was guilty of fraud in procuring the certificate of election, in which event, no deduction should be allowed.

RICHMOND UNION PASSENGER RAILWAY COMPANY v. NEW YORK & SEA BEACH RAILWAY COMPANY.—Decided at Richmond, December 2, 1897. *Keith*, P. Absent, *Cardwell*, J:

1. PROCESS—*Service on corporation which has ceased to exist.* Service of process on the late president of a corporation which has ceased to exist is sufficient though the process might have been served by publication as prescribed by section 1103 of the Code. The latter method is simply cumulative.

2. PLEADING—*General issue—Special pleas.* It is not error to refuse to allow special pleas to be filed which set up no defences except such as can be presented under the general issue.

3. PRINCIPAL AND AGENT—*Ratification of act of unauthorized agent.* The act of an unauthorized agent, subsequently ratified by the principal, is as binding as though previously authorized.

4. EVIDENCE—*To whom credit extended—Plaintiff's book of original entry.* Where a defendant denies liability on a contract, of which he has accepted the benefit, on the ground that credit was not extended to him, but to his alleged agent, the books of original entry of the plaintiff are admissible in evidence to show that the credit was extended to the defendant, and that the accounts sued on were charged to him at the time of the contract.

5. EVIDENCE—*Dealings between two corporations—Death of agent of one.* In an action by a corporation against another corporation, the death of the agent who negotiated the contract on behalf of the defendant does not disqualify from testifying an agent of the plaintiff who did not negotiate the contract on its behalf, even if it disqualified the plaintiff's negotiating agent. A letter signed "A by B" is A's letter.

6. EVIDENCE—*Contract for reasonable wages—Evidence of what is reasonable.* In an action on a contract whereby the plaintiff agrees to furnish to the defendants engineers "at a reasonable rate of wages," it is competent for the plaintiff to prove what would be a reasonable charge for the engineers furnished.

7. VARIANCE—*Declaration and proof—Action against one, account against two.* There is no variance between the allegation and the proof where the the declaration avers a contract with the defendant, and the proof shows that the contract was made through an agent who disclosed the defendant as his principal. The account filed with the declaration was against the defendant and another, and is sufficient; the plaintiff having offered to strike out the name of the other and it not having been done because the defendant objected.

8. CORPORATIONS — *Denial of existence — Sufficiency of affidavit.* An affidavit which denies the existence of any such corporation as the defendant corporation at the time of the institution of plaintiff's suit, but does not deny the existence of such corporation at the time of the contract sued on, is not sufficient under section 3280 of the Code to put the plaintiff to proof of the existence of such a corporation.

9. PRINCIPAL AND AGENT—*Agent contracting for disclosed principal—Presumption—Burden of proof—Case at bar—Prior suit against agent—Election.* An agent who fully discloses his agency and the name of his principal, and contracts only as the agent of his principal incurs no personal responsibility. While he may bind himself personally, the presumption is otherwise, and the burden of proof is on him who undertakes to establish the agent's personal liability. In the case at bar it is clear that the agent contracted for a disclosed principal, that credit was extended to the principal, the benefits of the contract were accepted by the principal, and there is no personal responsibility on the agent. The mere fact that the plaintiff instituted a suit on the contract against the agent, which suit has never been prosecuted, cannot relieve the principal from liability on the contract. In this case there were not "two concurrent debtors for the same debt."

NAPIER v. PRISON ASSOCIATION OF VIRGINIA.—Decided at Richmond, December 9, 1897.—*Harrison*, J. Absent, *Cardwell*, J:

1. PRISON ASSOCIATION—*Commitment before conviction.* Under the provisions of the statute (Acts 1895-'6, p. 658) a Hustings Court may commit to the Prison Association of Virginia, before conviction, an infant who has neither parent nor legal guardian to consent to such commitment, although the infant does not consent thereto.